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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA

PETER DELVECCHIA, *et al.*,) Case No: 2:19-CV-01322-KJD-DJA

vs.) Plaintiffs,

)) DECLARATION OF JOHN D. MCKAY
FRONTIER AIRLINES, INC., *et al.*,) IN SUPPORT OF PLAINTIFFS' MOTION
Defendants.) TO EXCEED PAGE LIMITS

I, John D. McKay, hereby make this Declaration pursuant to 28 U.S.C. §1746:

1. I am counsel for Plaintiffs in this action, along with Margaret McLetchie and Leo Wolpert.
2. This case involves events that occurred on March 28, 2019 on board a Frontier Airlines flight conducted from Raleigh-Durham International Airport to Las Vegas International Airport (“LAS”).

1 3. The operative Complaint contains five Counts (Violations of 42 U.S.C. § 1981,
2 Intentional Infliction of Emotional Distress, False Imprisonment, Battery and Assault, and
3 Defamation *Per Se*).
4 4. The aircraft used for the subject flight, an Airbus A320, was configured for 180 passenger
5 seats, and it was nearly full with only a few empty seats. Thus, there were numerous
6 passenger witnesses who needed to be found, interviewed and deposed.
7 5. There were six crew members involved: four flight attendants and two pilots. None of the
8 crew members' versions of the facts aligned, so there were six different versions of facts
9 during the flight in addition to the Plaintiffs' version.
10 6. Several Frontier agents also worked at LAS and were involved in the facts of the case.
11 7. A LVMPD officer, Sgt. Francois Obasi, met the flight at the gate and was deposed.
12 8. In addition, the § 1981 claims involved an examination of previous discrimination
13 complaints and their handling by Frontier for use as evidence of pretext, *see Lyons v.*
14 *England*, 307 F.3d 1092, 1110 (9th Cir. 2002); *United Airlines, Inc. v. Evans*, 431 U.S.
15 553, 558 (1977); *Gay v. Waiters' and Dairy Lunchmen's Union, Local No. 30*, 694 F.2d
16 531, 553 (9th Cir. 1982). There were multiple documents pertaining to 325 such
17 complaints produced, and several depositions were taken of the Frontier employees who
18 handled the complaints for Frontier's "Denver Team."
19 9. Discovery occurred over four years. A total of 42 depositions were taken, some with
20 multiple sessions. They included ten passengers, six crew members, two ground agents,
21 Sgt. Obasi, five Frontier Customer Relations employees, a teacher and principal at A.D.'s
22 school, two of Peter's doctors, five of A.D.'s doctors, both Plaintiffs, two of Plaintiffs'
23 family members, one friend of Peter's, three retained experts, and the Rule 30(b)(6)
24 deposition of Frontier. In addition, Frontier produced thousands of pages of documents,
25 many of which are relevant to Plaintiffs' claims.
26 10. Frontier's Motion for Summary Judgment, ECF No. 266, asks the Court to dismiss
27 Plaintiffs' entire case. Therefore, under Rule 56, Plaintiffs are required to show that there
28 are genuine issues of material fact on which a jury could find in their favor on all the

1 elements of six different causes of action, as well as addressing Defendants' arguments
2 about claims of immunity.

3 11. There are 98 separately numbered facts, taken from the deposition testimony and the
4 relevant documents¹ that describe Frontier's procedures for all of its different types of
5 employees, that are necessary to discuss in order to meet the Rule 56 standard in this
6 complex, multi-party litigation. Plaintiffs also need to explain disputes regarding facts that
7 Frontier has claimed to be undisputed. Setting out all of those facts plus explanations in
8 double-spaced format in the Statement of Facts mandated by Local Rule 56-1 has
9 consumed slightly over 25 pages (counsel worked diligently over the entire weekend to
10 condense the Statement of Facts, and succeeded in eliminating 10 pages from the original
11 35). Although LR 56-1 states that the Statement of Facts counts against the 30-page limit,
12 it has already consumed 84% of the page limit. Counsel would be doing their clients a
13 disservice to omit any of the facts or necessary arguments for reasons of space limitations.

14 12. The legal issues in this case are complex, especially concerning § 1981, defamation, and
15 the various defense theories raised by Defendants in their motion. Plaintiffs have been
16 able to limit the necessary response arguments to 25 pages, which would be a normal
17 amount of argument in a case where the Statement of Facts takes only 4 or 5 pages to
18 present.

19 13. I am respectfully requesting the Court's leave to file the 51-page Response in Opposition
20 in this complex and important case of civil rights violations and intentional torts.

21 I declare under penalty of perjury that the foregoing is true and correct.

22 Executed on November 20, 2023.

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25 John D. McKay
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28 ¹ More than 5,000 documents have been produced in discovery in this case.